

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DWAYNE B., by his next friend, John Stempfle; CARMELA B., by her next friend William Ladd; LISA J., by her next friend, Teresa Kibby; and JULIA, SIMON, and COURTNEY G., by their next friend, William Ladd; for themselves and others similarly situated,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, *et al.*,

Defendants.

No. 2:06-cv-13548

HON. NANCY G. EDMUNDS

Class Action

**STIPULATED ORDER
REGARDING PROVISIONS
6.27 AND 6.28 OF THE
MODIFIED
SUSTAINABILITY AND
EXIT PLAN (MISEP)**

**STIPULATED ORDER REGARDING PROVISIONS 6.27 AND 6.28
OF THE MODIFIED SUSTAINABILITY AND EXIT PLAN
(MISEP)**

WHEREAS provisions 6.27 and 6.28 (Commitments 81 and 82) of the Modified Sustainability and Exhibit Plan (MISEP, ECF No. 294) address immunizations for children in the Plaintiff Class; and

WHEREAS the parties have negotiated the terms of this Stipulation to measure DHHS's compliance with provisions 6.27 and 6.28.

IT IS HEREBY STIPULATED AND AGREED by and between the parties that the following terms shall be utilized to measure DHHS's compliance with provisions 6.27 and 6.28 of the MISEP:

A. Measurement Terms

1. For each reporting period starting in Reporting Period 19 (July 2020 – December 2020), DHHS will provide performance data in the usual course, as described in the MISEP, to the Monitors for the following eleven immunizations: (1) DTP/DTAP/DT/TD/Tdap; (2) Hepatitis B; (3) Hib; (4) Meningococcal Conjugate; (5) Measles, Mumps, Rubella (MMR); (6) Pneumococcal Conjugate; (7) Polio; (8) Varicella; (9) HPV; (10) Rotavirus; and (11) Hepatitis A.

2. Performance for provisions 6.27 and 6.28 shall be measured by immunization for each of the eleven immunizations listed above. Accordingly, the Monitors shall report DHHS's compliance for each of the eleven immunizations for each reporting period.

3. To determine DHHS's performance for provisions 6.27 and 6.28, the Monitors shall calculate performance using the following formulas:

Calculation for 6.27:

Number of children who entered care in the first 90 days of the reporting period and have been in care for at least 90 days as of the last day of the reporting period and who have received X immunization as of their 90th day in care

Number of children who entered care in the first 90 days of the reporting period and have been in care for at least 90 days as of the last day of the reporting period excluding the children who are overage or underage for X immunization

Calculation for 6.28:

Number of children that have been in care for at least 90 days as of the last day of the reporting period who have received X immunization

Number of children that have been in care for at least 90 days as of the last day of the reporting period excluding the children who are overage or underage for X immunization

B. Additional Terms

1. For Reporting Period 18 (January-June 2020), provisions 6.27 and 6.28 shall be held in abeyance and DHHS need not provide data to the Monitors or Plaintiffs for provisions 6.27 and 6.28.

2. DHHS is not required to meet any performance benchmark for the influenza immunization to be in compliance with provisions 6.27 and/or 6.28. Accordingly, DHHS is not required to provide data to the Monitors or Plaintiffs related to the influenza immunization.

The parties respectfully request this Honorable Court enter an order approving this stipulation.

IT IS SO ORDERED.

Dated: March 12, 2021

s/ Nancy G. Edmunds
HON. NANCY G. EDMUNDS
United States District Judge

Stipulated and Agreed to by:

/s/ Samantha M. Bartosz
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Date: March 11, 2021

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Date: March 11, 2021